

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

M.P. MOON,

Plaintiff,

v.

No. 1:19-cv-01856-SB

CORTEVA, INC. and DUPONT DE
NEMOURS, INC.,

Defendants.

P. Bradford deLeeuw, DELEEUEW LAW LLC, Wilmington, Delaware; Michael C.
McKay, MCKAY LAW, LLC, Scottsdale, Arizona.

Counsel for Plaintiff.

Beth Moskow-Schnoll, Brittany M. Giusini, Juliana R. van Hoeven, BALLARD
SPAHR LLP, Wilmington, Delaware; David S. Fryman, Katherine J. Atkinson,
BALLARD SPAHR LLP, Philadelphia, Pennsylvania.

Counsel for Defendants.

MEMORANDUM OPINION

May 7, 2021

BIBAS, *Circuit Judge*, sitting by designation.

M.P. Moon, a former DuPont employee, is suing over his retirement plan. He is suing DuPont, the plan sponsor, and Corteva, DuPont's parent. Compl. ¶¶ 5–6, D.I. 19. He claims that the companies breached their fiduciary obligations by failing to tell him he was eligible for retirement benefits.

The companies have moved to dismiss. They argue that they are not plan fiduciaries, though they concede that the plan's Administrative Committee is and that Moon could sue it instead. D.I. 22, at 9.

Moon does allege that the companies are fiduciaries. Compl. ¶¶ 5–6. But to survive the motion to dismiss, he had to support that legal conclusion with concrete factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). He has not and all but concedes this shortcoming. D.I. 24, at 9. So I will grant the motion and dismiss without prejudice. Moon should file an amended complaint promptly. He may add new defendants or add facts that plausibly suggest that the companies (and not just their Administrative Committee) are fiduciaries.

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ORDER

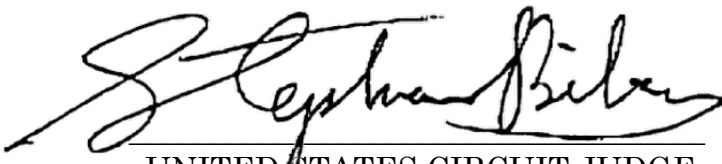
1. The motion to dismiss, D.I. 22, is **GRANTED**. The Amended Complaint, D.I. 19, is **DISMISSED WITHOUT PREJUDICE**.

2. By May 14, Moon shall file an amended complaint. He shall make changes only to address the issue discussed in the accompanying opinion.

3. The defendants may file a renewed motion to dismiss by May 21. If they no longer contest whether they are proper defendants, they need not file another brief, and the Court will rule on the other issues presented in the original motion to dismiss.

4. If defendants still wish to contest whether they are proper defendants, they shall file a brief not to exceed five pages on the issue. Moon may then file a five-page answering brief by May 28, and the defendants may file a three-page reply by June 2.

Dated: May 7, 2021


UNITED STATES CIRCUIT JUDGE